



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Alexandra Celeste Erazo,

Plaintiff,

-against-

Commissioner of Social Security,

Defendant.

1:24-cv-03856 (SDA)

ORDER

WHEREAS, on August 23, 2022, Administrative Law Judge John P. Costello issued a decision finding that Plaintiff was not entitled to Disability Insurance Benefits (ECF No. 8, R. 9-23); and

WHEREAS, Plaintiff was advised that she must file a written appeal within 60 days of the date she received the notice (which was presumed to be five days after the date of the notice), *i.e.*, by October 27, 2022 (R. 6-7); and

WHEREAS, Plaintiff requested review of the ALJ's decision on May 2, 2023 (R. 4), several months beyond the deadline; and

WHEREAS, on January 24, 2024, the Appeals Council wrote a letter to Plaintiff requesting a statement of good cause for filing an untimely request of the ALJ's decision (R. 52-53); and

WHEREAS, Plaintiff did not respond to the request for good cause for missing the deadline, and by notice dated March 14, 2024, the Appeals Council found there was no good cause for extending the time to file a request for review of the ALJ's decision, and the Appeals

Council dismissed Plaintiff's request for review of the ALJ's decision (R. 1-5), which was the final decision of the Commissioner; and

WHEREAS, on May 13, 2024, Plaintiff filed a Complaint in this action seeking judicial review of a final decision of the Commissioner of Social Security (ECF No. 1); and

WHEREAS, on November 1, 2024, the Commissioner filed his brief in opposition (ECF No. 17); and

WHEREAS, in his brief, the Commissioner noted the factors the Appeals Council will consider in determining if a claimant had good cause for missing the deadline to request review¹ (ECF No. 17, at PDF p. 4); and

WHEREAS, on January 6, 2025, Plaintiff filed a memorandum in further support of her request for review, in which she argues that she is entitled to equitable tolling of the Appeals Council deadline because she pursued her rights diligently, and suggests that she had good cause for missing the deadline because she could not find necessary information in support of her claim within the required time frame (ECF No. 22, at PDF pp. 6-8); and

WHEREAS, Plaintiff failed to submit any sworn affidavit or declaration setting forth facts supporting her equitable tolling and good faith arguments.

¹ These factors are (1) the circumstances that kept the claimant from making the request on time; (2) whether any Social Security Administration action misled her; (3) whether the claimant did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and (4) whether the claimant had any physical, mental, educational, or linguistic limitations (including facility with the English language), which prevented her from timely filing the request or from understanding or knowing about the need to file a timely request. 20 C.F.R. §§ 404.911, 404.968(b).

NOW, THEREFORE, it is hereby ORDERED, as follows:

1. No later than March 31, 2025, Plaintiff shall file a declaration or affidavit supporting her claims of diligence and good cause, including (a) the efforts she made to obtain the “supplement[al]” and “correct[ed]” medical records from her doctors at NYU Langone that are referred to on page 7 of her memorandum (ECF No. 22), (b) the dates of such efforts, and (c) the dates she received such records.
2. No later than April 11, 2025, the Commissioner may file any response.

SO ORDERED.

Dated: New York, New York
March 18, 2025

A handwritten signature in black ink, reading "Stewart D. Aaron". The signature is written in a cursive, flowing style.

STEWART D. AARON
United States Magistrate Judge